No. 83-1100

In the Supreme Court
OF THE
United States

GARY LEE BATTAGLIA,
Petitioner,

vs.

THE COMMITTEE OF BAR EXAMINERS OF THE
STATE BAR OF CALIFORNIA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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QUESTIONS PRESENTED

1. Whether California's refusal to provide judicial review of an administrative agency's denial of certification for admission to the practice of law constitutes a deprivation of liberty without due process of law.

2. Whether petitioner is denied equal protection of the law when the State Supreme Court refuses to apply, to his case, California law which requires independent judicial examination of the record and a weighing of the evidence relied upon by the agency denying certification.

PARTIES

The party filing this petition is an applicant for admission to the California Bar. The respondent Committee of Bar Examiners is appointed by the Board of Governors of the State Bar of California. The Supreme Court of California exercises supervisory power over The Committee of Bar Examiners and has original and exclusive jurisdiction over all judicial disputes relating to Bar admission. Thus, The Supreme Court of California and/or the State of California, although not named in the caption, are technical parties to this proceeding.

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No.

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Petitioner Gary Lee Battaglia respectfully files this Petition For Writ of Certiorari to the Supreme Court of the State of California.

OPINIONS AND ORDERS OF COURTS AND ADMINISTRATIVE AGENCIES BELOW

On November 22, 1982, a hearing panel of the State Bar Court, an administrative tribunal, filed a decision recommending that petitioner "*should be* certified to the practice of law in the State of California forthwith." Emphasis added. (Exhibit "B" to Petition for Review, lodged separately.) On May 20, 1983, the Committee of Bar Examiners of the State Bar of California concluded that petitioner "*shall not be* certified to the Supreme Court of California for admission to practice . . ." (Exhibit "C" to Petition for Review, lodged separately.) On July 22, 1983,

petitioner filed with the State Supreme Court a Petition for Review, which was summarily denied, without opinion, by order dated September 8, 1983. A Petition for Reconsideration filed September 21, 1983, was denied, without opinion, by order dated October 5, 1983. The Petition for Review, Order Denying Review, Petition for Reconsideration, and Order Denying Rehearing are in the Appendix to this petition. The exhibits referred to in the Petition for Writ of Review, "A" through "D", are lodged with the Clerk of the Supreme Court. In compliance with the Rules, the briefs in support of the petitions have not been filed or lodged.

JURISDICTION

The date of the order sought to be reviewed is September 21, 1983. The date of the order denying rehearing (actually "reconsideration") is October 5, 1983. The statutory provision conferring jurisdiction on this Court to review the judgment by writ of certiorari is 28 U.S.C. 1257, subdivision 3.

STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides, in pertinent part, as follows: "nor shall any person . . . be deprived of . . . liberty . . . without due process of law . . .".

The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part, as follows: "No State shall make or enforce any law which shall abridge the privileges of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

California Business and Professions Code Section 6046, enacted 1939, empowers the Committee of Bar Examiners "(a) To examine all applicants for admission to practice law; (b) To administer the requirements for admission to practice; (c) To certify to the Supreme Court for admission those applicants who fulfill the requirements . . ." Section 6066, enacted 1939, provides, in pertinent part, that: "Any person refused certification to the Supreme Court for admission to practice may have [that action] reviewed by the Supreme Court, in accordance with the procedure prescribed by the Court."

Rules Regulating Admission to Practice Law in California, promulgated by the Board of Governors of the State Bar of California provide, inter alia, that "any person refused certification to the Supreme Court for admission to practice may have the action of the Committee reviewed by the Supreme Court in accordance with the procedure prescribed therefore. Rule I, Section 11.

California Rules of Court provide, inter alia, as follows: "a petition to the Supreme Court to review any . . . action of the [Committee of Bar Examiners] . . . shall be filed within 60 days after written notice of the action complained of is mailed . . . the petition shall be verified, shall specify the grounds relied on and shall be accompanied by the petitioner's brief and proof of service on The State Bar . . . Within ten (10) days after service . . . The State Bar may serve and file an answer and brief. Within five (5) days after service of the answer, the petitioner may serve and file a reply. *If a review is ordered by the Supreme Court,* the State Bar, within 45 days after the filing of the order, may serve and file a supplemental

brief. Within 15 days after service of such brief the petitioner may file a reply brief . . .". Rule 952(c), emphasis added. [Rule 59(b) as renumbered and amended effective October 1, 1973; previously amended effective July 1, 1968.]

STATEMENT OF THE CASE

The instant petition results from an administrative denial of certification for admission to practice law and subsequent refusal of the California Supreme Court, which exercises original and exclusive jurisdiction over such matters, to provide judicial review.

On December 28, 1981, petitioner was notified that the Committee of Bar Examiners had referred his Bar application to the State Bar Court, an administrative tribunal of the State Bar of California. (See Exhibit "A" to Petition for Review, lodged separately.) On November 22, 1982, the State Bar Court, after a lengthy hearing, filed its "Findings of Fact and Recommendation", concluding that "the applicant *should be* certified to practice law in the State of California forthwith." (Emphasis added, see Exhibit "B" to Petition for Review, lodged separately.) On May 20, 1983, the Committee of Bar Examiners, after a perfunctory hearing, rejected the State Bar Court's recommendation and concluded that petitioner *"shall not be* certified to the Supreme Court of the State of California for admission to practice law . . .". (Emphasis added, see Exhibit "D" to Petition for Review lodged separately.)[1]

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[1]The Committee's reversal of the State Bar Court's recommendation was purportedly based upon its review of a voluminous transcript of hearings before the State Bar Court which transpired over a period of approximately four months, during which the Bar Court heard 26 witnesses and received over 95 exhibits along with written briefs and oral argument. The Committee's subsequent "hearing" was conducted on February 11, 1983 (see Exhibit "C" attached to

Petitioner sought judicial review by taking the only course permitted under California law. He filed a Petition for Review. (See Appendix.) Cal.B&P.Code § 6066; Cal.R. of Court 952(c); Rules Regulating Admission I, § 11. The Petition was summarily denied without opinion. See Appendix. California Rules of Court 56-60 relating to original proceedings do not provide for transmittal of the underlying administrative record to the Supreme Court. A Petition for Reconsideration was also denied in the form of an order, erroneously styled as an "Order Denying Rehearing". (See Appendix.)

This Court has held that "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment." *Schware v. Board of Bar Examiners,* 353 U.S. 232, 238-239 (1956). This petitioner first sought

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Petition for Review, lodged separately), after which the Committee *immediately* denied certification. That proceeding had to be reopened, at petitioner's request, because the Committee had not followed its own rules, i.e., "for the exclusive purpose of considering those portions of the record which were not before the Committee at the time of the February 11, 1983 hearing." (Exhibit "D" to Petition for Review, lodged separately.) No provision was made for petitioner's attendance at the "reopened" hearing at which time the Committee corrected its irregularity and ratified its previous action. The nature of Committee "hearings", such as the one attended by petitioner on February 11, 1983, (Exhibit "C" to Petition for Review, lodged separately) is aptly described by the California Supreme Court in *Hightower v. State Bar,* 34 Cal.3d 150, 153 (1983): ". . . [O]ral argument would be limited to 15 minutes for each side with 5 minutes for rebuttal, and . . . [petitioner] would be permitted to make a statement under oath but . . . the total time limit would be 20 minutes for him and his counsel. There was no provision for testimony by witnesses." Such was the proceeding at which the Committee of Bar Examiners reversed the action of the State Bar Court that had heard testimony over many months.

access to the judicial process to examine the "*reasons*" for his exclusion. Having been denied judicial review, he asks this Court to examine the "*manner*" of his exclusion. In a footnote in *Schware*, this Court points out that, regardless of whether the practice of law is a "right" or a "privilege", an applicant cannot be denied admission except for valid reasons. "Certainly the practice of law is not a matter of the State's grace." Id. n.5 at 239.

In *Konigsberg v. State Bar of California*, 353 U.S. 252 (1956), this Court emphasizes that exclusion from the practice of law adversely affects an applicant's livelihood noting that "[t]his deprivation has grave consequences for a man who has spent years of study and a great deal of money in preparing to be a lawyer." 353 U.S. 257-258. The identification of a substantial and fundamental interest, i.e., the opportunity to practice one's chosen profession, has due process implications if judicial review is denied. See *Boddie v. Connecticut*, 401 U.S. 371, 375 (1971). What is at stake here is well expressed by Mr. Justice Douglas dissenting in *Barsky v. Board of Regents*, 347 U.S. 442, 472 (1953):

> The right to work, I had assumed, was the most precious liberty that man possesses. Man has indeed as much right to work as he has to live, to be free, to own property. The American ideal was stated by Emerson in his essay on *Politics*, "A man has a right to be employed, to be trusted, to be loved, to be revered." It does men little good to stay alive, and free and propertied, if they cannot work. To work means to eat. It also means to live. For many, it would be better to work in jail, than to sit idle on the curb. The great values of freedom are in the opportunities afforded man to press to new horizons,

> to pit his strength against the forces of nature, to match skills with his fellow man.

In *Konigsberg*, supra, this Court assumes that the California scheme mandates a judicial review that encompasses an examination of the facts and a weighing of the evidence; that the California Supreme Court "exercises original jurisdiction and *is not restricted to the limited review made by an appellate court.*" 353 U.S. 254, emphasis added. Mr. Justice Black directs attention to the California court's own pronouncement that *it* "has the inherent power and authority to admit an applicant to practice law [and that] the recommendation of the Board of Bar Governors is advisory only. . . . [*T*]*he final determination in all these matters rests with this Court and its powers in that regard are plenary and its judgment conclusive.*" 353 U.S. 254 (emphasis added), quoting from *In re Lacey*, 11 Cal.2d 699, 701 (1938).

After *Konigsberg* the California Supreme Court spoke in even stronger terms respecting its responsibilities in cases involving denial of certification to practice law. In *Siegel v. Committee of Bar Examiners* 10 Cal.3d 156 (1973)[2]:

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[2]The California Supreme Court observes in *Siegel* that deference is given to the findings and recommendations of the body that "observe[d] the demeanor of witnesses and the character of their testimony". 10 Cal.3d 173. To apply this principle to the instant case, the California court would have been required to examine the transcript of proceedings before the State Bar Court and give deference to *its findings* for it was that body which heard the witnesses, judged their credibility and weighed the evidence, *not the Committee of Bar Examiners*. The State Bar Court recommended petitioner's admission "forthwith". Thus, the State court's denial of review here is even more egregious than in *Willner v. Committee on Character and Fitness*, 373 U.S. 96 (1962).

> *In accordance with our duty to undertake an independent examination of the evidence in cases of this kind* (citations omitted), *we proceed to a consideration of the record.* 10 Cal.3d 160, emphasis added.
>
> • • •
>
> The legal rules and principles which govern our inquiry in matters of this nature are well settled. Although the findings of the Committee are entitled to and accorded great weight, we are not bound by them. Rather *this Court independently examines and weighs the evidence and passes upon its sufficiency.* The applicant bears the burden of showing that the Committee's findings are not supported by the evidence or "that its decision or action is erroneous, or unlawful," *but all reasonable doubts are to be resolved in his favor.* 10 Cal.3d 173

In *Hallinan v. Committee of Bar Examiners,* 65 Cal.2d 447 (1966), the California Supreme Court holds that, in both disciplinary and admission cases, it "examines and weighs the evidence and passes upon its sufficiency [and that] *any reasonable doubts encountered in the making of such an examination should be resolved in favor of the accused.*" 65 Cal.2d 451. Emphasis added. "We examine the evidence and make our own determination as to its sufficiency, resolving reasonable doubts in favor of petitioner." *Hightower v. State Bar,* 34 Cal.3d 150, 156 (1983). In *Hall v. Committee of Bar Examiners,* 25 Cal.3d 730 (1979) the State court emphasizes the *mandatory* nature of its review:

> The applicant bears the burden of proving his good moral character (citation omitted). Once the applicant has furnished enough evidence of good character to establish a prima facie case, the Committee may

> attempt to rebut that showing. (Citation omitted.) We turn, then, to the independent examination of the record *which we must undertake in reviewing a certification denial,* to determine whether applicant Hall has made his prima facie showing and if so, whether the record contains sufficient evidence of bad moral character to rebut that showing (citations omitted). 25 Cal.3d 734, emphasis added.

Thus, the California Supreme Court subsequent to the 1939 enactment of B&P Code Section 6066 and Rule of Court 952(c), [1968, 1973], has clearly, unequivocally and repeatedly, announced that California law requires it to make an independent examination of the record and to weigh the evidence following a denial of certification by the Committee of Bar Examiners. See, for example, *Hall v. Committee of Bar Examiners,* supra, 25 Cal.3d at 734 decided in 1979 citing *Konigsberg,* supra, *Siegel,* supra, and *Hallinan,* supra, followed in *Martin B. v. CBE* 33 Cal.3d 717 (1983); *Hightower v. State Bar,* supra, 34 Cal.3d 150, 156 (1983). That such review was not afforded petitioner in the instant case amounts to both a denial of procedural due process and equal protection of the law. Cf. *In re Armstrong,* 126 Cal.App.3d 565, 569 (1981).[3]

Refusal of the California Supreme Court to grant judicial review to petitioner results in an invidious discrimination.

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[3] In *Armstrong,* the California appellate court observed: "Although the United States Supreme Court has never held that States are required to provide appellate review, 'once established, these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts' (citations omitted). * * * The right of 'equal access' to the courts rests upon the 'Constitutional guarantees of due process and equal protection. . . .'" 126 Cal.App. 3d 569.

This Court has stated:

> "Due process" emphasizes fairness between the State and the individual dealing with the State, regardless of how other individuals in the same situation may be treated. "Equal protection," on the other hand, emphasizes disparity in treatment by a State between classes of individuals whose situations are arguably indistinguishable." *Ross v. Moffitt*, 417 U.S. 600, 609 (1973).

Pursuant to the requirements of Supreme Court Rule 21.1(h), we assert that the Petition for Review (see Appendix) filed in the Supreme Court of the State of California raises federal constitutional questions as follows:

> The action of the Committee is arbitrary and capricious and denies due process of law to petitioner. Par. IX
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> • • •
>
> There is no substantial evidence to support the conclusions of respondent [Committee of Bar Examiners] and the proceedings upon which the Committee's action is based are fundamentally unfair. Par IX
>
> • • •
>
> Said findings . . . are vague, indefinite, ambiguous, and uncertain and without evidentiary support, and manifest the arbitrary and capricious nature of respondent's refusal to certify petition . . . for admission to practice law in the State of California. Par. X
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> • • •
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> The Committee of Bar Examiners arbitrarily and capriciously refuses to apply statutory and case law to the facts of this case. Par. XI
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> • • •
>
> The deprivation of substantial rights implicit in refusing to allow petitioner to enter the profession for

> which he has been trained . . . deny to petitioner equal protection and due process of law. Par. XI

Upon receipt of the order denying review, petitioner filed a Petition for Reconsideration (see Appendix) which asserted federal constitutional questions as follows:

> Petitioner has been refused judicial review of the final actions of an administrative agency over which this Court exercises original jurisdiction, thereby denying to petitioner a judicial remedy of any kind. Par. I
>
> * * *
>
> The only agency to conduct a due process hearing recommended that petitioner be certified forthwith for admission to the practice of law . . . The Committee of Bar Examiners overturned that determination without providing a hearing that comports with due process requirements and without employing any discernible standard of review. Par. II
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> * * *
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> Since this Court has original jurisdiction in all matters related to Bar admission, this Court is the only *judicial* body empowered to review the record and consider petitioner's assertions that he has been denied due process and equal protection of the law. Par. III
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> * * *
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> Petitioner passed the California bar examination in 1978. Since that time, *no* court has reviewed the Committee of Bar Examiners' refusal to certify him for admission. Par. IV
>
> * * *
>
> The procedure adopted by the Committee of Bar Examiners and its failure to employ any standard of review denies to petitioner the benefit of this Court's

rule that all reasonable doubts should be resolved in favor of an applicant. Par. V

* * *

This Court by refusing review of the actions of the Committee of Bar Examiners denies petitioner the opportunity to have a judicial officer apply the reasonable doubt standard to the record of this case. Par. VI

* * *

In the five years that have elapsed since petitioner passed the California bar examination, he has been denied by the Committee of Bar Examiners the opportunity to practice the profession for which he has been trained, and has not had the benefit of judicial review by any court, despite [his] allegations . . . that he has been subjected to arbitrary and capricious treatment by a non-judicial, administrative agency of the State. Par. XIII

AMPLIFICATION OF REASONS FOR ALLOWANCE OF THE WRIT OF CERTIORARI

The California Supreme Court, by summarily denying the Petition for Writ of Review, has adopted the same discretionary standard that this Court would apply in considering certiorari, but in so doing so has denied to one of its citizens "initial access to the courts." Douglas J. dissenting in *Ortwein v. Schwab*, 410 U.S. 656, 662 (1973). That we are concerned with a "fundamental interest," which this Court found lacking in *Ortwein*, is firmly established by *Schware*, supra, and *Konigsberg I*, supra. In those cases, this Court holds that "A State cannot exclude a person from the practice of law or from any other occupation in a manner . . . that contravene[s] the Due Process or Equal Protection Clause of the Fourteenth Amendment." *Schware v. Board of Bar Examiners*, supra, 353 U.S. 238-239.

In the context of administrative mandamus, California courts have recognized that without an examination of the record and a weighing of the evidence, judicial review of an administrative decision becomes an arid and meaningless ritual. *Strumsky v. San Diego County Employees Retirement Association*, 11 Cal.3d 28 (1974). In *Strumsky*, the State Supreme Court stated:

> The essence to be distilled is this: When an administrative decision affects a right which has been legitimately acquired or is otherwise "vested," and when that right is of a fundamental nature from the standpoint of its economic aspect or its "effect . . . in human terms and the importance . . . to the individual in the life situation," then a full and independent *judicial* review of that decision is indicated because "[t]he abrogation of the right is too important to the individual to relegate it to exclusive administrative extinction." 11 Cal.3d 34, emphasis the Court's.

Here, of course, petitioner's rights as defined in *Schware* and *Konigsberg I* have been extinguished without any judicial review of the administrative record upon which the denial was based.[4]

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[4]In *Willner v. Committee on Character and Fitness*, 373 U.S. 96 (1962), this Court held that a Character Committee's denial of an application for admission, followed by a petition to the Appellate Division, which was denied without opinion, amounted to a denial of due process in that the petitioner had been denied admission to the Bar without a hearing before either the Character Committee or the Appellate Division. Willner had been denied a hearing before *both* the administrative body and the court, but *Willner* is this case turned on its head. Here, the administrative body that heard the evidence recommended admission, *after which* a second administrative body, which did not hear the evidence, denied admission and the California Supreme Court denied judicial review. Thus, this petitioner (Battaglia) is in no different constitutional position than

The central issue confronting the Court in the instant case was raised in *Ortwein v. Schwab*, supra, 410 U.S. 656. However, in a per curiam opinion, the five-justice majority declined to reach that issue, i.e. whether judicial review of administrative action is compelled as a matter of due process of law, holding that *Ortwein* presented no question of a fundamental interest or suspect classification and, therefore, was controlled by *United States v. Kras*, 409 U.S. 434 (1973), rather than *Boddie v. Connecticut*, supra, 401 U.S. 371.

Mr. Justice Douglas, dissenting, points out that, while the Court has recognized that due process does not require a State to provide an appellate system, *Ortwein* is not concerned with appellate review but with "*initial access* to the courts for review of an adverse administrative determination." 410 U.S. 662, emphasis by Douglas J. We think the emphasis here should be on that point. On that score, the language of Justice Douglas extrapolated from his dissent in *Ortwein* seems to represent prevailing law:

> Access to the courts before a person is deprived of a valuable interest, at least with respect to questions of law, seems to be the essence of due process. 410 U.S. 662.

Willner. Battaglia had his hearing before an administrative body that recommended that he be admitted. The denial of admission came from a second administrative agency that provided only the most perfunctory hearing (see *Hightower v. State Bar*, supra, 34 Cal.3d at 153) and it is this second recommendation that the State Supreme Court declines to review. The language of this Court, quoted in *Willner*, is particularly apt here:

> The requirements of fairness are not exhausted in the taking or consideration of evidence but extend to the concluding parts of the procedure as well as to the beginning and intermediate steps. 373 U.S. 105 quoting from *Morgan v. United States*, 304 U.S. 1, 20.

"Token access", says Justice Douglas, "cannot satisfy the requirements of due process." 410 U.S. 662-663. Mr. Justice Marshall, also dissenting in *Ortwein*, writes as follows:

> As my Brother Douglas demonstrates, it is at very least doubtful that the Due Process Clause permits a State to shield an administrative agency from all judicial review when that agency acts to revoke a benefit previously granted. I share the view of Mr. Justice Brandeis that "[t]he supremacy of law demands that there shall be opportunity to have some court decide whether an erroneous rule of law was applied; and whether the proceeding in which facts were adjudicated was conducted regularly." (Citations omitted.) That opportunity was denied in this case and important benefits were thereby taken from appellants without affording them a chance to contest the legality of the taking in a court of law. 410 U.S. 665-666.

Here, we are concerned with a fundamental and substantial right involving one's livelihood and chosen profession rather than "a benefit previously granted" but, as *Schware* and *Konigsberg I* teach, the principle is the same.

CONCLUSION

This Petition For Writ of Certiorari satisfies the two considerations set out in this Court's Rule 17.1(c). First and foremost, the Supreme Court of the State of California has decided a federal question in a way that conflicts with applicable decisions of this Court and secondly, the California Supreme Court has, *sub silentio*, decided an important question of federal law which should be settled by this Court.

While California statutes and rules may imply that judicial review of administrative denial of Bar admission is

discretionary, California law, as defined by the State Supreme Court in accord with due process requirements, consistently rejects discretion in favor of a mandatory duty independently to examine and weigh the evidence and resolve all reasonable doubt in favor of an applicant. *Hall v. Committee of Bar Examiners,* supra, 25 Cal.3d at 734; *Siegel v. Committee of Bar Examiners,* supra, 10 Cal.3d at 160, 173; *Hallinan v. Committee of Bar Examiners,* supra, 65 Cal.2d at 451; *Hightower v. State Bar,* supra, 34 Cal.3d at 165. In the words of the California Supreme Court. "Freedom from arbitrary adjudicative procedures is a substantive element of one's liberty." *People v. Ramirez,* 25 Cal.3d 260, 268 (1979). This principle is carried out in California case law relating to Bar admissions. The State court's failure to apply it here has resulted in a denial of due process and equal protection of law.

For the reasons set forth above, the Petition For Writ of Certiorari to The Supreme Court of The State of California should be granted.

DATED: December 29, 1983.

Respectfully submitted,
GOLDSTEIN & PHILLIPS

By ALVIN H. GOLDSTEIN, JR.
Attorneys for Petitioners

No. _____

IN THE SUPREME COURT

OF THE

UNITED STATES

GARY LEE BATTAGLIA

Petitioner,

vs.

THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA

Respondent.

APPENDIX TO WRIT OF CERTIORARI

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ORDER DENYING WRIT OF REVIEW

S.F. No. 24593

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

IN BANK.

GARY LEE BATTAGLIA

v.

COMMITTEE OF BAR EXAMINERS

Petition for writ of review DENIED.

BIRD

CHIEF JUSTICE

(FILED: September 8, 1983)

ORDER DENYING REHEARING

S.F. No. 24593

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

IN BANK

BATTAGLIA

v.

COMMITTEE OF BAR EXAMINERS

Petition for rehearing DENIED.

BIRD

CHIEF JUSTICE

(FILED: October 5, 1983)

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

GARY LEE BATTAGLIA, Petitioner, v. THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA, Respondent.	)	NO. _____

PETITION FOR REVIEW

I

Petitioner graduated from law school in May 1977, and in December 1978, was notified by respondent Committee of Bar Examiners ("Committee" or "CBE") that he had passed the bar examination. In April 1979, respondent, through the Division of Trial Counsel, initiated proceedings to prevent petitioner's admission to the Bar. Thereafter, through the present time,

despite the fact that all questioned conduct occurred during the period 1976 to 1978, and despite a recommendation of the State Bar Court in 1982, that petitioner be admitted, respondent has persistently and unlawfully refused to certify petitioner for admission to the Bar.

II

In June 1979, a hearing panel of the State Bar Court recommended to the Committee that petitioner not be admitted to practice law. In December 1979, the Committee modified the findings of the panel, and for good cause shown, shortened the usual time for reapplication from two years to one year. (Rule X, §104(a), Rules Regulating Admission to Practice Law in California.)

III

In January 1981, petitioner reapplied for admission to practice law. Eleven months later, in December 1981, respondent served a Notice of Hearing, thereby commencing the proceedings from which petitioner seeks review. (Notice of Hearing dated December 28, 1981 attached hereto as Exhibit "A.") Thereafter, from March 22, 1982 to July 9, 1982, evidentiary hearings were conducted during which twenty-six witnesses testified and ninety-five exhibits, including a transcript of the 1979 proceedings, were received.

IV

On November 17, 1982, the State Bar Court concluded: "The Applicant should be certified to practice law in the State of California forthwith." (Findings of Fact and Recommendation attached hereto as Exhibit "B"; emphasis added.)

V

Thereafter, the Committee granted the application of the Division of Trial Counsel for a hearing. Petitioner appeared before the Committee on February 11, 1983, was placed under oath, questioned by Committee members, and allowed twenty minutes to argue against the unsworn assertions of the Division of Trial Counsel, many of which were inaccurate and unsupportable. On February 15, 1983, respondent notified petitioner that it had determined on February 11 that petitioner was not qualified for admission to practice law and would not be certified for admission, thus reversing the recommendation of the State Bar Court. A transcript of the February 11, 1983 proceeding before the Committee is attached hereto as Exhibit "C."

VI

Thereafter, petitioner discovered that at the time of respondent's decision on February 11, 1983, the Committee had not complied with Rule X, Section 103(f), Rules Regulating Admission to Practice Law in California, requiring preparation of a reporter's transcript of the State Bar Court proceedings. Respondent's decision of February 11, 1983 was made without access to or review of the testimony of fourteen witnesses, many of whom had testified on the subject of petitioner's character.

VII

On February 16, 1983, petitioner filed a written motion requesting that the Committee vacate its determination of February 11, 1983 and reopen the hearing. On April 1, 1983, petitioner was notified that the Committee had granted the motion

to reopen the hearing "for the exclusive purpose of completing the record by reviewing those portions of the record which were not before the Committee at the time of the [February 11] hearing." Petitioner was allowed ten days to file a brief related exclusively to the material completing the record and the State Bar was allowed ten days to respond. Petitioner's brief was duly filed. There was no response from the State Bar. No provision was made for the further testimony of petitioner.

VIII

On May 4, 1983, petitioner was notified by respondent that, on April 30, 1983, the Committee again determined that he did not qualify for admission to practice law and would not be certified for admission. On May 25, 1983, petitioner was served "Findings and Conclusion" of

the Committee (Exhibit "D" attached hereto) overturning the "Findings of Fact and Recommendation" of the State Bar Court (Exhibit "B"). This Petition for Review is pursuant to California Rules of Court, Rule 952(c); Rules Regulating Admission to Practice Law in California, Rule I, §§2, 11; California Business and Professions Code, §6066.

IX

The action of the Committee is arbitrary and capricious and denies due process of law to petitioner. There is no substantial evidence to support the conclusions of respondent and the proceedings upon which the Committee's action is based are fundamentally unfair. The Committee did not judge the credibility of witnesses that appeared before the State Bar Court, did not weigh the evidence, did not receive additional evidence and did not

employ the substantial evidence rule of any discernible standard of review. Petitioner is denied certification for admission despite a finding of the State Bar Court which did judge the credibility of witnesses and weigh the evidence.

X

CBE findings 7, 8, 9, 10 and 11 (Exhibit "D") are the only substantive findings of the Committee relating to character and they are insufficient as a matter of law to support the respondent's refusal. Moreover, said findings are not supported by any substantial evidence, or any evidence whatsoever. Said findings, particularly 9, 10 and 11, are vague, indefinite, ambiguous and uncertain and without evidentiary support, and manifest the arbitrary and capricious nature of respondent's refusal to certify petitioner

to this Court for admission to practice law in the State of California.

XI

The Committee of Bar Examiners arbitrarily and capriciously refuses to apply statutory and case law to the facts of this case. The deprivation of substantial rights, implicit in refusing to allow petitioner to enter the profession for which he has been trained, despite the fact that he has qualified for the practice of law, and despite the fact that persons in the community in which he resides, and would practice law, consider him to be a person of good moral character, deny to petitioner equal protection and due process of law. Petitioner has no other remedy available to him save this Petition for Review.

XII

Petitioner presently possesses good moral character, has not committed acts involving moral turpitude, and is fully qualified to practice law. This Court is respectfully requested to review the proceedings conducted by respondent, to set the matter for hearing, and to order that petitioner be certified to this Court for admission to the practice of law.

DATED: July 21, 1983.

Respectfully submitted,

GOLDSTEIN & PHILLIPS

By _____
ALVIN H. GOLDSTEIN, JR.

Attorneys for
Petitioner

V E R I F I C A T I O N

I, GARY LEE BATTAGLIA, am the Petitioner in this proceeding. I have read the foregoing PETITION FOR REVIEW and know the contents thereof. The same is true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on July 21, 1983, at San Francisco, California.

(Signed)

GARY LEE BATTAGLIA

ALL EXHIBITS REFERRED TO IN THE

PETITION FOR REVIEW

- EXHIBITS A, B, C AND D -

HAVE BEEN LODGED SEPARATELY WITH THE

CLERK OF THE SUPREME COURT

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

GARY LEE BATTAGLIA, Petitioner, v. THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA, Respondent.	)	NO. 24593

PETITION FOR RECONSIDERATION

1. Petitioner has been refused judicial review of the final actions of an administrative agency over which this Court exercises original jurisdiction, thereby denying to petitioner a judicial remedy of any kind. (See Exhibit A attached.)

2. The only agency (the State Bar Court) to conduct a due process hearing recommended that petitioner be certified

forthwith for admission to the practice of law. (See Exhibit B to Petition for Review.) The Committee of Bar Examiners overturned that determination without providing a hearing that comports with due process requirements and without employing any discernible standard of review.

3. Since this Court has original jurisdiction in all matters related to Bar admission, this Court is the only judicial body empowered to review the record and consider petitioner's assertions that he has been denied due process and equal protection of the law.

4. Petitioner passed the California Bar Examination in 1978. Since that time no court has reviewed the Committee of Bar Examiners' refusal to certify him for admission.

5. The procedure adopted by the Committee of Bar Examiners and its failure to employ any standard of review, denies to

petitioner the benefit of this Court's rule that all reasonable doubts should be resolved in favor of an applicant. Hallinan v. Committee of Bar Examiners, 65 Cal.2d 447, 451 (1966).

6. This Court, by refusing review of the actions of the Committee of Bar Examiners', denies petitioner the opportunity to have a judicial officer apply the reasonable doubt standard to the record of this case.

7. The operative findings of the Committee of Bar Examiners, i.e., that petitioner was "less than candid"; that his "judgment in various financial matters continues to be poor"; and that he "had no reasonable belief that he could pay for [VISA] credit card purchases at a specific time", are either unsupported by any substantial evidence, or subject to the reasonable doubt standard, or both, and

petitioner is entitled to judicial review of those findings.

8. In the five years that have elapsed since petitioner passed the California Bar Examination, he has been denied by the Committee of Bar Examiners the opportunity to practice the profession for which he has been trained, and has not had the benefit of judicial review by any court, despite petitioner's allegations as set forth in the petition for review that he has been subjected to arbitrary and capricious treatment by a non-judicial administrative agency of the State.

9. Petitioner respectfully requests reconsideration and asks that this Court review the actions of respondent which

unlawfully refuses certification for admission to the practice of law.

DATED: September 21, 1983.

Respectfully submitted,

GOLDSTEIN & PHILLIPS

By _____
ALVIN H. GOLDSTEIN, JR.

Attorneys for
Petitioner

V E R I F I C A T I O N

I, GARY LEE BATTAGLIA, am the Petitioner in this proceeding. I have read the foregoing PETITION FOR RECONSIDERATION and know the contents thereof. The same is true of my own knowledge.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 21, 1983, at San Francisco, California.

(Signed)

GARY LEE BATTAGLIA